

(2011) 01 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No. 3401 of 2010 along with Miscellaneous Writ No. 11765 of 2010

Vijaya Aharodyama

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) ILR (Kar) 1983 : (2011) 3 KarLJ 689 : (2011) 2 KCCR 1470 : (2011) 2 RCR(Rent) 203

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : H. Jayakara Shetty, for the Appellant; R. Omkumar, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Persons having no right either in law or on facts and who make a habit of coming to this Court on one pretext or the other invoking writ jurisdiction and if this Court, more often than not, out of sheer sympathy and only to ensure that clear opportunity is given to any person if any adverse order is passed, if remands to original authority, it does not mean it creates any right in favour of any person who had approached this Court invoking writ jurisdiction.

2. Writ jurisdiction is not one to confer rights on any person much less to grant lands or other properties belonging either to the Government or private persons. Any person who has right otherwise constitutional, statutory or even private property rights if is affected by a public authority by misuse of the statutory powers, administrative powers or even constitutional powers conferred on such public authority, can come to this Court complaining of violation of such existing rights. Writ jurisdiction cannot be one for creating rights or for recognition of disputed rights for grant of relief.

3. Even assuming some rights are affected by the action of some public authority, if the statute provides for a remedy by way of appeal or revision, such affected persons are normally relegated to avail the statutory remedies as disputed facts while can never be looked into in writ jurisdiction, even questions of law can also be examined by the Appellate Authorities who have been conferred with such powers.

4. Writ jurisdiction has to be confined to the examination of the grave threat to the rights of citizens and persons by the misuse and abuse of powers by public authorities.

5. Regularisation of illegal encroachments/occupation is not the function of the Writ Court. Procedural irregularities which can very well be corrected by the Appellate Authorities etc., also cannot be subject-matter for issue of writs, particularly, with the writ jurisdiction being a discretionary jurisdiction conferred on the High Courts under the Constitution of India.

6. It is noticed that tendency, of late is to flood the High Court with all trivial, insignificant, irrelevant matters just because some person is aggrieved by some order passed by some official at even the lowest level and there are instances of writ petitions being filed even against the orders passed by the Revenue Inspector, Tahsildar and what not.

7. While this phenomena may indicate the confidence which a Writ Court inspires amongst the litigant public and also reflects on the poor quality of public administration in the executive part of the State Governance, it is neither possible nor necessary for this Court to get active for exercise of writ jurisdiction in all situations, particularly, when the subject-matter is trivial, insignificant and the affectation to the rights of writ Petitioner is minimal or when Petitioner has no right at all much less any affectation! There are a catena of higher administrative authorities against such officials who might have committed errors at lower levels and assuming that such officials have committed such error or illegality, that can be corrected by bringing it to the notice of the higher authority. It is not the function of the Writ Court to run the administration of the State and it is only when citizens' existing rights are affected, the matter warrants examination, in writ jurisdiction.

8. In the present case, writ Petitioner admittedly is a person who appears to have encroached an extent of six cents of land which is the property of the third Respondent-Shivapura Grama Panchayat, which land even as submitted by Sri Jayakara Shetty, learned Counsel for the Petitioner is a land abutting existing property in Sy. No. 24/1 of Shivapura Village, Karkala Taluk, Udupi District, belonging to the Petitioner.

9. It is also the version of the Petitioner that the Petitioner has been making use of this extent of Government land for the past several years, wherein a well has been dug up and water from well is being used for the benefit of the villagers through public taps. It is in respect of such land with the well and public taps,

the Petitioner appears to be claiming interest on the basis that the Petitioner had installed the public taps etc.

10. Assuming any person has installed any public tap in any land belonging to the Government and if such taps are being used by the villagers and undisputedly the land belongs to the Panchayat, there is no question of the Petitioner asserting any rights over it.

11. What is questioned in this writ petition is the, show-cause notice dated 11-1-2010 (copy at Annexure-A) issued by the Tahsildar, Karkala, calling upon the Petitioner to quit and vacate possession of this extent of six cents of land within a period of seven days as the matter after having been remanded by this Court in terms of order dated 14-10-2009 passed in Writ Petition No. 30094 of 2009, and after re-examination has been found that the Petitioner has absolutely no right, title or interest in the subject land and that it cannot hold on or hang on to the land.

12. There is absolutely nothing-wrong with an order of this nature.

13. Submission of Sri Jayakar Shetty, learned Counsel for the Petitioner, that this order is in contravention of the direction issued by this Court in the said writ petition to say the least is most misleading. The operative portion of the order dated 14-10-2009 passed in W.P. No. 30094 of 2009 reads as under:

6. In the instant case, since notice has been issued on 7-10-2009 i.e., on the very date the mahazar was conducted on the face of it the same would indicate that the action would suffer from non-compliance of principles of natural justice. Hence, the operative portion of the notice dated 7-10-2009 directing the Petitioner to remove the alleged deviation/encroachment cannot be sustained and that portion of the notice stands quashed. Further, it is directed that the said notice dated 7-10-2009 shall be treated as a show-cause notice to the Petitioner calling upon him to explain the deviation as indicated in the mahazar at Annexure-O. After considering the reply to be furnished by the Petitioner, the second Respondent would arrive at a finding of fact and only thereafter appropriate action could be taken in accordance with law. Since this Court has directed the notice to be considered as a show-cause notice, the Petitioner would appear before the second Respondent-Tahsildar without further notice on 23-11-2009 as the first date of appearance and thereafter the Tahsildar shall regulate the proceedings and conclude the same in accordance with law. All contentions of the Petitioner are left open to be urged before the second Respondent-Tahsildar.

In terms of the above, the petition stands disposed of with no order as to costs.

14. Submission of Sri Jayakar Shetty, learned Counsel for the Petitioner, based on this order is that direction issued by this Court to the Tahsildar was to regulate the proceedings and Tahsildar has not done so.

15. Submission is most incorrect in the wake of the following order passed by the

Tahsildar:

16. It is obvious that the Petitioner had been given ample opportunity, failed to produce any supporting material before the authority and in fact even the case of the Petitioner is not that six cents of land belongs to the Petitioner, but it is conceded that it is Government land. If the Tahsildar acting as revenue authority has taken action to evict the illegal occupation/encroachment, has done a proper thing and it is also his duty.

17. Even after thorough examination of the pleadings in the petition and submissions made at the Bar, I find that there is absolutely no scope for interference with the order of the Tahsildar and the writ petition is nothing short of a most frivolous writ petition and the writ Petitioner has only abused the process of writ jurisdiction of this Court.

18. Writ petition is dismissed levying exemplary cost of Rs. 10,000/-on the Petitioner payable in favour of the third Respondent-Grama Panchayat, Shivapura. Cost to be deposited before this Court within four weeks from today, failing which the registry is directed to issue a certificate in favour of the third Respondent for recovery of this amount as though it is decree passed by the Civil Court.

19. In view of dismissal of the main writ petition itself, Misc. W. No. 11765 of 2010 for impleading does not survive for consideration, which is also hereby dismissed, but reserving liberty to this Applicant, to pursue their efforts elsewhere in accordance with law.